

# EXHIBIT C

## Exhibit C<sup>1</sup>

### Excerpts from Lease

“This Lease, Construction and Operation Agreement (‘Lease’), comprising a demise of certain premises, together with grants of certain rights with respect thereto and over other premises, is made as of the 30th day of May, 1991 by and between SEARS, ROEBUCK AND CO. . . . (herein ‘Tenant’) and MALL OF AMERICA COMPANY . . . (herein ‘Landlord’).”

### Article 3

#### Term

##### 3.1 Term

“(A) The term of this Lease (herein ‘Term’) shall commence on the date of this Lease and the initial period of the Term shall endure for Thirty (30) Years after the date that a Sears department store is first opened in fact for business to the public in the Tenant Building (herein ‘Tenant’s Opening Date’), unless said initial period of the Term shall be sooner terminated as provided herein. If, however, Tenant’s Opening Date shall fall on a day other than the first day of a month, then the initial period of the Term shall endure for the unexpired portion of such month plus THIRTY (30) YEARS beginning with the first of the month next ensuing. Tenant will pay Rent, and other sums then due from Tenant to Landlord under this Lease, prorated on a daily basis for the unexpired portion of such month to and inclusive of the last day of said month.” Lease at Art. 3.1(A).

##### 3.2 Extensions of Lease: Holdover

“(A) Tenant may successively extend this Lease upon the same terms and conditions as herein contained for SEVEN (7) separate and consecutive periods of TEN (10) YEARS each beginning after the expiration of the initial period of the Term, or any extension thereof, by giving Landlord notice of the extension elected by Tenant not less than TWELVE (12) MONTHS prior to the first day of the extended or further extended Term. Nothing contained in the foregoing provisions shall preclude or limit Landlord from terminating this Lease or otherwise pursuing other remedies available to Landlord if Tenant is in default of this Lease.” *Id.* at Art. 3.2(A).

### Article 4

#### Uses

##### 4.2. Ancillary Uses

“INCORPORATION OF REA PROVISIONS. The provisions of Article XXI-D of the REA are by this reference incorporated into this Lease with such changes in the use of terms identifying the Parties and their respective Tracts as are necessary in the context of the Lease, and shall be binding upon and shall inure to the benefit of Landlord and Tenant in the manner and to the extent set forth in the REA throughout the Term of the Lease, regardless of whether the REA terminates prior to the expiration or termination of this Lease.” *Id.* at Art. 4.2.

---

<sup>1</sup> Capitalized terms used but not defined herein have the meaning provided to them in *Transform Holdco LLC’s Reply to MOAC Mall Holdings LLC’s (I) Objection to Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction; (II) Second Supplemental and Amended: (A) Objections to Debtor’s Notice of Assumption and Assignment of Additional Designatable Leases, and (B) Objection to Debtor’s Stated Cure Amount; and (III) Third Supplemental and Amended Objections to Debtor’s Notice of Assumption and Assignment of Additional Designatable Leases*, the Lease, the Option Agreement, or the REA.

#### 4.3 Operating Covenant

“INCORPORATION OF REA PROVISIONS. The provisions of Articles XXII-A and XXII-C of the REA are by this reference incorporated into this Lease with such changes in the use of terms identifying the Parties and their respective Tracts as are necessary in the context of the Lease, and shall be binding upon and shall inure to the benefit of Landlord and Tenant in the manner and to the extent set forth in the REA throughout the Term of the Lease, regardless of whether the REA terminates prior to the expiration or termination of this Lease. Notwithstanding anything in the REA to the contrary, in the event Landlord fails to correct any of the conditions described in Article XXII-C(1)(x), (y) or (z) of the REA within the one (1) year period following written notice of such condition from Tenant pursuant to Article XXII-C of the REA, then, as an alternative to the termination of its Operating Covenant as permitted by Article XXII-C of the REA, Tenant may elect by written notice to Landlord, to continue to operate its Store, and in such event Tenant shall be entitled to discontinue its Common Area payments to Landlord under Article 22 of this Lease until such time as Landlord has cured such condition. In the event Tenant notifies Landlord of its election to continue to operate its Store pursuant hereto, then, notwithstanding any failure of Landlord to cure such condition, Tenant shall continue to operate its Store throughout the entire duration of the Major Operating Period (as defined in the REA).” *Id.* at Art. 4.3.

#### 4.4 Option to Lease Third Floor of Tenant Building

“(1) Tenant covenants to Landlord that If at any time after the Major Operating Period of Sears (as defined in the REA) Tenant, its successors or assigns, shall cease to operate at least twenty thousand (20,000) square feet of Floor Area (as defined in the REA) on the third floor of the Tenant Building for purposes then permitted by the REA, then Tenant, its successors and assigns, shall grant to Minntertainment Company, a Minnesota general partnership ("Minntertainment"), an affiliate of Landlord, or, at the option of Minntertainment, an affiliate of Minntertainment, their successors and assigns, the exclusive and irrevocable first right and option (but not the obligation) to lease said third floor of the Tenant Building from Tenant, its successors and assigns, in accordance with the terms set forth in that certain Agreement to Grant Option To Lease, dated as of the date hereof by and between Tenant and Minntertainment ('Option Agreement'). Any default by Tenant under the Option Agreement shall constitute a default by Tenant under this Lease.” *Id.* at Art. 4.4(1).

### Article 6

#### Assignment and Related Rights

##### 6.1 General Rights

“INCORPORATION OF REA PROVISIONS. The provisions of Article XXV of the REA are by this reference incorporated into this Lease with such changes in the use of terms identifying the Parties and their respective Tracts as are necessary in the context of the Lease, and shall be binding upon and shall inure to the benefit of Landlord and Tenant in the manner and to the extent set forth in the REA throughout the Term of the Lease, regardless of whether the REA terminates prior to the expiration or termination of this Lease. Subject to the provisions of Article XXV of the REA, Tenant shall have the right, subject to the provisions of Article XXII-C of the REA, during the term hereof, to sublease that portion of the Tenant's Building which is in excess of Tenant's minimum Floor Area specified in Article IX-A of the REA without Landlord's consent. Tenant shall have the right at any time, without the consent of Landlord, to grant subleases, licenses or concessions for the sale of merchandise and services in or from portions of the Tenant's Building

as a part of Tenant's usual conduct of business within the premises, subject to the provisions of Article XXII-C of the REA." *Id.* at Art. 6.1.

### 6.3 Sale by Tenant to Landlord

"(A) In the event that at any time and from time to time after the expiration of the Sears Operating Period, and until the Term expires Tenant decides to cease, and ceases to operate, a store in the Tenant Building and further determines to sell, exchange or otherwise transfer its interest in the Leased Premises, Tenant shall, by giving Landlord notice, first offer to Landlord the right to purchase the same (1) at the price offered to Tenant pursuant to a bona fide offer in a good faith, arms length transaction with a prospective purchaser-assignee unrelated to Tenant and on the same terms and conditions offered to Tenant or (2) if no such offer has been made to Tenant, at a price equal to the fair market value of Tenant's leasehold estate including the value of its improvements." *Id.* at Art. 6.3(A).

"(C) None of the foregoing provisions of this Paragraph 6.3 shall be applicable to:

- (1) a transfer to an Affiliate of Tenant;
- (2) a transfer pursuant to reorganization, consolidation, merger or liquidation or the transfer or all or substantially all of the assets of Tenant; and
- (3) a transfer pursuant to a bona fide financing arrangement with any lender.

The foregoing provisions of this Paragraph 6.3 shall remain binding upon any transferees of or through Tenant pursuant to the preceding Paragraph 6.3(C)(1), (2) and (3), and shall be binding upon any transferees pursuant to a power of sale in a Mortgage or a transfer pursuant to or in lieu of foreclosure proceedings. Tenant may request, and Landlord shall furnish, a written statement that a transfer under the above provisions of this Paragraph 6.3(C) is acknowledged by Landlord as being a transfer hereunder." *Id.* at Art. 6.3(C).

## Article 21

### Rent

#### 21.1 Rent

"Commencing on Tenant's Opening Date (as defined in the REA), Tenant covenants and agrees to pay to Landlord the fixed rent ('Rent') in the amount of Ten Dollars (\$10.00) for each Lease Year during the Term hereof, including any extension period as provided in Article 3 hereof. Rent shall be paid in advance of the first day of each Lease Year, and will not be in default until the fifteenth day after the date for payment. Concurrently with the execution hereof, Tenant is paying to Landlord the sum of Three Hundred Dollars (\$300.00) in payment of Rent for the first thirty (30) Lease Years of the Term hereof. Landlord hereby acknowledges receipt of such sum." *Id.* at Art. 21.1.

## Article 22

### Tenant's Common Area Payments

#### 22.1 Common Area Payments

"During the first through, and including, the fifth Lease Year, Tenant shall pay to Landlord per Lease Year the sum of \$1.10 per square foot of Floor Area in the Tenant Building, in equal monthly installments, as Tenant's annual contribution to the maintenance and insurance of the Common Areas. Tenant shall increase its annual contribution every five (5) years (commencing with the

sixth Lease Year) by twenty cents (\$.20) per Lease Year per square foot of Floor Area in the Tenant Building.” *Id.* at Art. 22.1(A).

#### Article 24

##### Merchant’s Association or Promotional Fund

“Tenant will become a member and shall make a contribution to the Shopping Center Merchants Association or Promotional Fund for a period of two (2) Lease Years after Tenant opens for business, and Tenant will pay dues during that period in the amount of five cents (\$.05) per square foot of Floor Area in the Tenant Building per Lease Year, payable in advance at the beginning of each such Lease Year upon receipt of invoice therefor. Subsequent to that two (2) year period, any decision to continue membership in the Merchants Association or to continue to make a contribution to the Promotional Fund, or to discontinue membership in the Merchants Association or to discontinue its contribution to the Promotional Fund, and any agreement as to the dues or contribution to be paid by Tenant if Tenant elects to continue as a member of the Merchants Association or to contribute to the Promotional Fund, will be made solely by Tenant.” *Id.* at Art. 24.

#### Article 25

##### 25.1 General Services

“Tenant shall be responsible for the payment of the expenses of using utility and other service desired or required by Tenant for the conduct of its business at the Leased Premises, for the security and other protection thereof and for the construction, reconstruction, restoration, maintenance and other work required of it or permitted to it by this Lease.” *Id.* at Art. 25.1(A).

#### **Excerpts from REA**

##### Article XXII

##### Covenants of Majors

“STANDARDS. The Parties agree that it is in their mutual best interests that the Stores of the Majors be developed and maintained as Department Stores as an integral part of the Shopping Center, to permit the Shopping Center to contain a combination of Occupants which represent a sound and balanced diversification of merchandise.” REA at Art. XXII-A.

##### Article XXII

##### Covenants of Majors

“SEARS’ COVENANTS TO DEVELOPER. (1) Provided (i) the Developer shall not be in default under the Operating covenant set forth in Article XXI hereof, (ii) at least two (2) other Department Stores are open and Operating, and (iii) Developer is using its reasonable best efforts to have at least fifty percent (50%) of the total lineal feet of Store frontage located within four hundred (400) feet of the entrance of Sears on each level of the Enclosed Mall open and Operating, Sears covenants and agrees with Developer its successors and assigns, but not with Macy’s or Nordstrom, it being expressly understood that the Operating covenant of Sears shall not run to the benefit of any other Department Store, that: (a) *Sears shall, for fifteen (15) years following the Opening Date of its Building (the said fifteen (15) year period or such lesser period as resulting from a termination being the ‘Major Operating Period of Sears’), Operate, or cause to be Operated in at least its Minimum Floor Area specified in Article IX (Sears’ ‘Minimum Floor Area’), a retail Department Store in the Sears Building, in at least fifty thousand (50,000) square*

*feet of Floor Area on each of levels one (1) and two (2) and at least 20,000 square feet of Floor Area on level three (3) (each of which is open directly to the Enclosed Mall) under the name 'Sears' (Sears 'Trade Name');*

...

In addition, Sears further covenants and agrees with Developer that during the remaining term of this REA, after the expiration of the Major Operating Period of Sears, so long as (i) the Shopping Center is being Operated as a first class regional shopping center, (ii) all of the other Department Stores and their respective Tracts are subject to a use restriction substantially the same as the restriction set forth in Article XXII-B above, (iii) at least seven hundred twenty thousand (720,000) square feet of Floor Area of the Developer Mall Stores distributed on at least 273,600 square feet on level one, 237,600 square feet on level two, and 208,800 square feet on level three of the Enclosed Mall on the Developer Tract is being Operated for retail purposes, and (iv) Developer has used its reasonable best efforts to have at least fifty percent (50%) of the total lineal feet of Store frontage located within four hundred (400) feet of the entrance of Sears on each level of the Enclosed Mall open and. Operating, then Sears, and its successors and assigns, shall not use the Sears Building or Sears Tract for any use or purpose other than *retail purposes customarily found in an enclosed mall shopping center and non-retail activities customarily incidental thereto or such other uses and purposes that are compatible and consistent with (and are not detrimental, injurious or inimical to) the operation of a first-class regional shopping center[.]*" *Id.* at Art. XXII-C (emphasis added to the particular references).

#### Article XXV

##### Transfers of Interests, Rights Powers and Obligations; Mortgage

#### 4. Transfer by Sears.

"After the Major Operating Period of Sears, Sears shall have the right without Developer's consent, but at all times subject to the applicable provisions of Article XXII hereof, to vacate all or any part of the Sears Building or to lease or sublease all or any portion of the Sears Building or to assign this REA[.]" *Id.* at Art. XXV-D4a.

##### Excerpts from Option Agreement

"1. Option to Lease Third Floor of Sears Building. If at any time after the Major Operating Period of Sears (as defined in the REA) Sears, its successors or assigns, shall cease to operate at least twenty thousand (20,000) square feet of Floor Area (as defined in the REA) on the third floor of the Sears Building for purposes then permitted by the REA, then Minntertainment or, at the option of Minntertainment, an affiliate of Minntertainment, their successors and assigns, shall have the exclusive and irrevocable first right and option (but not the obligation) to lease said third floor of the Sears Building from Sears, its successors and assigns, for the remainder of the term of the Lease, in accordance with the terms set forth herein (Minntertainment, or its affiliate, whichever shall exercise such option, shall hereinafter be referred to as the 'Third Floor Lessee'). In the event Sears intends to cease such operation of at least twenty thousand (20,000) square feet of Floor Area on the third floor of the Sears Building, Sears shall give written notice of such election to Minntertainment, at the address set forth below, at least one (1) year prior to such cessation of operation thereof. The Third Floor Lessee's right and option to lease the third floor of the Sears Building from Sears may be exercised by the Third Floor Lessee within two (2) years after Minntertainment has received such written notice from Sears, by giving written notice to Sears of such exercise.

...

If the Third Floor Lessee exercises its right and option to lease the third floor of the Sears Building from Sears, the terms and provisions of such lease from Sears to the Third Floor Lessee shall be substantially similar to the terms and provisions of the Lease; provided, however, that the financial terms of such lease from Sears to the Third Floor Lessee shall be as set forth in Paragraph 2 hereof.” Option Agreement ¶ 1.

“2. Rent. The rent to be paid by the Third Floor Lessee to Sears under such lease shall be equal to the sum of (a) the total of all real estate taxes, utilities, Common Area Payments and Merchants Association/Promotional Fund charges which Sears is obligated to pay under the terms of the Lease, multiplied by a fraction, the numerator of which is the number of square feet of gross leasable area on the third floor of the Sears Building and the denominator of which is the total number of square feet of gross leasable area on all floors of the Sears Building plus (b) the net amount equal to fifty percent (50%) of any minimum and percentage rent which the Third Floor Lessee actually receives from the subtenant of the third floor of the Sears Building, after the Third Floor Lessee has been fully reimbursed from its receipt of such minimum and percentage rent for all hard and soft costs incurred by the Third Floor Lessee in securing a subtenant for said third floor, together with Interest thereon (as defined in the Lease) from the date each of such costs were incurred.” Option Agreement ¶ 2.